

ORIGINAL



0000136010

MEMORANDUM

TO: Docket Control

FROM: Steven M. Olea  
Director  
Utilities Division

Date: April 23, 2012

RE: **STAFF REPORT** FOR IN THE MATTER OF (i) APPLICATION OF GARY SMYTH, AN INDIVIDUAL, TO TRANSFER WATER SYSTEM ASSETS AND CERTIFICATE OF CONVENIENCE AND NECESSITY TO TIERRA LINDA WATER COMPANY, INC.,; AND (ii) THE APPLICATION OF TIERRA LINDA WATER COMPANY, INC. FOR AUTHORIZATION TO ISSUE STOCK TO ACQUIRE SAID WATER SYSTEM ASSETS AND CERTIFICATE OF CONVENIENCE AND NECESSITY.  
(DOCKET NOS. W-20689A-11-0252 AND W-20810A-11-0252)

Attached is the Staff Report for Gary Smyth dba Tierra Linda Homeowners Association, Inc.'s Application for approval to transfer water system assets and Certificate of Convenience and Necessity to Tierra Linda Water Company, Inc. and the Application of Tierra Linda Water Company, Inc. for authorization to issue stock to acquire Gary Smyth's water system assets and Certificate of Convenience and Necessity. Staff is recommending approval with conditions.

SMO:BNC:tdp

Originator: Blessing Chukwu

Arizona Corporation Commission

**DOCKETED**

**APR 23 2012**

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Service List for: Gary Smyth dba Tierra Linda Homeowners Association, Inc. and Tierra Linda Water Company, Inc.  
Docket Nos. W-20689A-11-0252 and W-20810A-11-0252

Mr. Lawrence V. Robertson, Jr.  
Post Office Box 1448  
Tubac, Arizona 85646

STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION

GARY SMYTH DBA TIERRA LINDA HOMEOWNERS ASSOCIATION, INC.  
AND  
TIERRA LINDA WATER COMPANY, INC.  
DOCKET NOS. W-20689A-11-0252 AND W-20810A-11-0252

APPLICATION FOR APPROVAL TO TRANSFER WATER SYSTEM ASSETS AND  
CERTIFICATE OF CONVENIENCE AND NECESSITY OF GARY SMYTH DBA TIERRA  
LINDA HOMEOWNERS ASSOCIATION, INC. TO TIERRA LINDA WATER COMPANY,  
INC. AND APPLICATION OF TIERRA LINDA WATER COMPANY, INC. FOR  
AUTHORIZATION TO ISSUE STOCK TO ACQUIRE GARY SMYTH'S WATER SYSTEM  
ASSETS AND CERTIFICATE OF CONVENIENCE AND NECESSITY

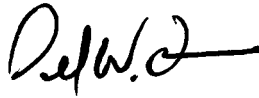
APRIL 23, 2012

## STAFF ACKNOWLEDGMENT

The Staff Report for Gary Smyth dba Tierra Linda Homeowners Association, Inc. and Tierra Linda Water Company, Inc. (Docket Nos. W-20689A-11-0252 and W-20810A-11-0252) was the responsibility of the Staff members signed below. Blessing Chukwu was responsible for the review and analysis of the Company's application. Del Smith was responsible for the engineering and technical analysis. Brendan C. Aladi was responsible for the financial analysis.

A handwritten signature in black ink, appearing to be 'B. Chukwu', with a long horizontal line extending to the right.

Blessing Chukwu  
Executive Consultant

A handwritten signature in black ink, appearing to be 'Del W. Smith', with a horizontal line extending to the right.

Del Smith  
Engineering Supervisor

A handwritten signature in black ink, appearing to be 'Brendan C. Aladi', with a horizontal line extending to the right.

Brendan C. Aladi  
Public Utilities Analyst III

**EXECUTIVE SUMMARY**  
**GARY SMYTH**  
**DBA TIERRA LINDA HOMEOWNERS ASSOCIATION, INC. AND**  
**TIERRA LINDA WATER COMPANY, INC.**  
**DOCKET NOS. W-20689A-11-0252 AND W-20810A-11-0252**

On June 24, 2011, Gary Smyth ("Smyth" or "Transferor")), an individual, dba Tierra Linda Homeowners Association, Inc. ("HOA" or "Company") filed an application with the Arizona Corporation Commission ("ACC" or "Commission") for approval to transfer water system assets and Certificate of Convenience and Necessity ("CC&N") to Tierra Linda Water Company, Inc. ("Tierra Linda" or "Transferee" and together with Mr. Smyth, the "Applicants"), in Pima County, Arizona. In the same application, Tierra Linda requested Commission authorization to issue stock to acquire Mr. Smyth's water system assets and CC&N ("the Application). On February 28, 2012, Staff filed a Sufficiency Letter indicating that the Application had met the sufficiency requirements of the Arizona Administrative Code.

Staff recommends the Commission approve Gary Smyth's application for approval to transfer water system assets and CC&N to Tierra Linda Water Company, Inc. and the Application of Tierra Linda Water Company, Inc. for authorization to issue stock to acquire Gary Smyth's water system assets and CC&N, within portions of Pima County, Arizona, subject to compliance with the following conditions:

1. That Tierra Linda be required to charge the authorized rates and charges in the transfer area.
2. That Tierra Linda file all pertinent documents evidencing the consummation of this transaction, no later than 30 days from the effective date of transaction, with the Utilities Division Compliance Section and file a letter in Docket Control stating that such documents have been filed with the Compliance Section.
3. That Tierra Linda be required to implement the water loss reduction plan filed in compliance with Decision No. 72002. The water loss should be reduced to less than ten percent by June 30, 2013. To verify this, Tierra Linda shall, by July 31, 2013, as a compliance item in this docket, file documentation which demonstrates that its water loss for the proceeding 12 month period is less than the ten percent threshold. This filing should include a completed water use data sheet for the period of July 1, 2012 through June 30, 2013, to include the monthly water loss data and the calculation of the water loss percentage.

Staff further recommends that the Commission's Decision granting the approval to transfer water system assets and CC&N to Tierra Linda Water Company, Inc. and the authorization to issue stock to acquire Gary Smyth's water system assets and CC&N be considered null and void, after due process, should Tierra Linda and Mr. Smyth fail to meet Condition Nos. 2 and 3 listed above within the specified time.

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## INTRODUCTION

On June 24, 2011, Gary Smyth (“Smyth” or “Transferor”), an individual, dba Tierra Linda Homeowners Association, Inc. (“HOA” or “Company”) filed an application with the Arizona Corporation Commission (“ACC” or “Commission”) for approval to transfer water system assets and Certificate of Convenience and Necessity (“CC&N”) to Tierra Linda Water Company, Inc. (“Tierra Linda” or “Transferee” and together with Mr. Smyth, the “Applicants”), in Pima County, Arizona. In the same application, Tierra Linda requested Commission authorization to issue stock to acquire Mr. Smyth’s water system assets and CC&N (“the Application”).

On February 28, 2012, Staff filed a Sufficiency Letter indicating that the Application had met the sufficiency requirements of the Arizona Administrative Code (“A.A.C.”).

## BACKGROUND

Mr. Smyth, an individual, dba Tierra Linda Homeowners Association, Inc. filed an application with Commission for approval to transfer the water system assets and CC&N which were the subject of Commission Decision No. 72002<sup>1</sup>, to Tierra Linda. Decision No. 72002 authorized Mr. Smyth to acquire the water system assets and CC&N previously owned by the HOA. The subject water system assets and CC&N are located in the vicinity of Tierra Linda Nueva Subdivision, approximately ten miles southwest of Marana, in Pima County, Arizona. Mr. Smyth reported 63 metered water connections in the Company’s 2010 Commission Annual Report. The CC&N covers an area of roughly 200 acres (approximately three-tenths of one square mile) in the northwest quarter of Section 29 in Township 12 South, Range 11 East. As currently platted, the certificated service area has the potential for a total of 190 residential metered water connections.

Mr. Smyth owns and operates Smyth Steel. Smyth Steel provides construction and installation services to water utility companies in Arizona.<sup>2</sup> Smyth constructed and installed the subject water system. According to Commission record, in 2008, Mr. Smyth acquired Cayetano Inc. dba Lakewood Water Company which is regulated by the Commission; and in July 2009, Mr. Smyth formed Smyth Utility Management which provides utility operating and management service to small and medium sized water and wastewater utilities in southern Arizona.

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<sup>1</sup> Decision No. 72002 became effective on December 10, 2010.

<sup>2</sup> Services provided include, among other things, the construction and installation of storage and pressure tanks, booster stations, arsenic treatment facilities and piping. (See Docket No. W-20689A-09-0327 and W-04236A-09-0327)

## **THE WATER SYSTEM**

The Company's water system consists of one well (Pump Yield 200 gallons per minute), one 400,000 gallon storage tank, three booster pumps (one 50 horsepower ("HP") and two 10 HP), one 5,000 gallon pressure tank and a distribution system serving 63 metered connections.<sup>3</sup> Staff concludes that the Company's water system has adequate production and storage capacity to serve existing customers and reasonable growth.

## **THE TRANSACTION**

Mr. Smyth formed Tierra Linda, a new corporation, to ultimately own and operate the water system assets he acquired from the HOA pursuant to Decision No. 72002.<sup>4</sup> Mr. Smyth's application herein is intended to achieve that result. Legal counsel for the Company concluded that the water system assets and the CC&N could not be transferred directly from the HOA to Tierra Linda and the assets and the CC&N would first have to be transferred to Mr. Smyth.

On April 18, 2011, the Commission approved Tierra Linda Articles of Incorporation, which established Mr. Smyth as the Director and the President and also authorized the issuance of up to 1,000 shares of common stock. Tierra Linda now requests to issue 501 shares of common stock to Mr. Smyth as consideration for his transfer of the water system assets and CC&N, thereby establishing Mr. Smyth's control of Tierra Linda. This transaction would complete Mr. Smyth's stated intent of ultimately operating the utility under an S-corporation structure.

There are no anticipated changes to the operation and maintenance of the Tierra Linda water system if the proposed transfer is approved. Christopher Hill, Arizona Department of Environmental Quality ("ADEQ") Certified Operator No. OP008883, will continue as the certified operator of the water system. Mr. Hill is a Grade 4 water distribution system and water treatment plant operator.

According to the Applicants, customer security deposits; refunds due on meter and service line installations; and all refunds due on Main Line Extension Agreements will be assumed by Tierra Linda subject to the Commission granting the relief requested in the Application.

## **NON-ACCOUNT WATER**

Non-Account water for the HOA water system slightly exceeded Staff's recommended ten percent threshold in 2009. Therefore, Decision No. 72002 ordered Mr. Smyth upon transfer to coordinate the reading of the well meter and individual customer meters on a monthly basis and report this data in the Company's Commission Annual Report filed for the year ending 2010.

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<sup>3</sup> Water company plant description data reported in 2010 Commission Annual Report.

<sup>4</sup> Smyth concluded that he preferred to own and operate the water system assets in question through an "S" corporation structure.



If the reported water loss was greater than ten percent Mr. Smyth was ordered to prepare a report containing a detailed analysis and plan to reduce water loss to less than ten percent.

### **ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY COMPLIANCE**

ADEQ regulates the Company's water system under ADEQ Public Water System I.D. No. 10-411. The Company has no major deficiencies and is delivering water that meets water quality standards required by 40 CFR 141/Arizona Administrative Code, Title 18, Chapter 4.<sup>5</sup>

### **ARIZONA DEPARTMENT OF WATER RESOURCES ("ADWR") COMPLIANCE**

The Company's CC&N is located within the Tucson Active Management Area. ADWR has determined that the Company is currently in compliance with departmental requirements governing water providers and/or community water systems.<sup>6</sup>

### **FINANCIAL ANALYSIS**

Mr. Smyth originally acquired the water system assets from the HOA for \$70,000. Tierra Linda provided Staff with a list of the utility assets to be transferred under this transaction and the historic net book value of the plant in service was approximately \$864,106 as of December 31, 2010. Mr. Smyth now proposes to transfer those utility assets and the CC&N to Tierra Linda in exchange for 501 shares of its common stock.

In Decision No. 72002, which approved the original sale to Mr. Smyth, the Commission determined that Mr. Smyth had demonstrated "that he has adequate financial resources to operate, maintain and expand the system."<sup>7</sup> Under the proposed transaction, Mr. Smyth would become the sole shareholder and owner of Tierra Linda.

Staff also notes that the HOA was granted a CC&N in Decision No. 67104, on July 9, 2004, but it never filed for a rate case and so the actual rate base has never been established for this utility. Therefore, the Commission will require that appropriate proof of all historic capital expenditures be provided with Tierra Linda's next rate case application.

### **ACC COMPLIANCE**

A check of the Compliance Database indicates that there are currently no delinquencies for the Company and that the Company has substantially met the compliance obligations contained in Docket Nos. W-20689A-09-0327 and W-04236A-09-0327 (and Decision No. 72002).<sup>8</sup> Staff however remains concerned since currently available water loss data indicates the water system continues to experience water loss which exceeds Staff's recommended ten percent

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<sup>5</sup> Per ADEQ Compliance Status Report, dated July 27, 2011,

<sup>6</sup> Per ADWR Water Provider Compliance Status Report dated July 6, 2011.

<sup>7</sup> Finding of Fact No. 23 at 4:5-6.

<sup>8</sup> Per Compliance Section email dated July 12, 2011.

threshold. Therefore, Staff recommends the following water loss compliance requirements in the pending dockets.

As a result of Decision No. 72002, on February 10, 2012, the Company docketed a plan to reduce its water loss to less than ten percent. Staff recommends that the Company implement its water loss reduction plan filed in compliance with Decision No. 72002.

Staff further recommends that the Company reduce water loss to less than ten percent by June 30, 2013. To verify this, the Company shall, by July 31, 2013, as a compliance item in this docket, file documentation which demonstrates that the Company's water loss for the proceeding 12 month period is less than the ten percent threshold. This filing should include a completed water use data sheet for the period of July 1, 2012 through June 30, 2013, to include the monthly water loss data and the calculation of the water loss percentage.

#### **CURTAILMENT PLAN TARIFF**

The Company has an approved curtailment tariff on file with the Commission.

#### **BACKFLOW PREVENTION TARIFF**

The Company has an approved Backflow Prevention tariff on file with the Commission.

#### **PROPOSED RATES**

Upon the acquisition of the Company's assets, the customers in the affected CC&N area will be charged the Company's existing rates for water.

#### **FRANCHISE**

Every applicant for a CC&N and/or CC&N extension is required to submit to the Commission evidence showing that the applicant has received the required consent, franchise or permit from the proper authority, pursuant to Arizona Revised Statute § 40-282.B. If the applicant operates in an unincorporated area, the Applicant has to obtain the franchise from the County. If the applicant operates in an incorporated area of the County, the applicant has to obtain the franchise from the City/Town.

Tierra Linda filed, in the docket, a copy of the franchise agreement it had entered into with Pima County.

#### **PUBLIC NOTICE**

On March 28, 2012, Tierra Linda docketed its *Affidavit of Mailing* showing that its customers of record were noticed of this filing through a bill insert, mailed on March 7, 2012.

## RECOMMENDATIONS

Staff recommends the Commission approve Gary Smyth's application for approval to transfer water system assets and CC&N to Tierra Linda Water Company, Inc. and the Application of Tierra Linda Water Company, Inc. for authorization to issue stock to acquire Gary Smyth's water system assets and CC&N, within portions of Pima County, Arizona, subject to compliance with the following conditions:


1. That Tierra Linda be required to charge the authorized rates and charges in the transfer area.
2. That Tierra Linda file all pertinent documents evidencing the consummation of this transaction, no later than 30 days from the effective date of transaction, with the Utilities Division Compliance Section and file a letter in Docket Control stating that such documents have been filed with the Compliance Section.
3. That Tierra Linda be required to implement the water loss reduction plan filed in compliance with Decision No. 72002, on February 10, 2012. The water loss should be reduced to less than ten percent by June 30, 2013. To verify this, Tierra Linda shall, by July 31, 2013, as a compliance item in this docket, file documentation which demonstrates that its water loss for the proceeding 12 month period is less than the ten percent threshold. This filing should include a completed water use data sheet for the period of July 1, 2012 through June 30, 2013, to include the monthly water loss data and the calculation of the water loss percentage.

Staff further recommends that the Commission's Decision granting the approval to transfer water system assets and CC&N to Tierra Linda Water Company, Inc. and the authorization to issue stock to acquire Gary Smyth's water system assets and CC&N be considered null and void, after due process, should Tierra Linda and Mr. Smyth fail to meet Condition Nos. 2 and 3 listed above within the specified time.

**MEMORANDUM**

DATE: February 14, 2012

TO: Blessing Chukwu  
Executive Consultant

FROM: Del Smith   
Engineering Supervisor

RE: Gary Smyth dba Tierra Linda Homeowners Association, Inc. application for authorization to transfer water system assets and certificate of convenience and necessity to Tierra Linda Water Company, Inc. (Docket Nos. W-20689A-11-0252 and W-20810A-11-0252)

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**Introduction**

On June 24, 2011, Gary Smyth ("Smyth"), an individual, dba Tierra Linda Homeowners Association, Inc. ("the Company"), filed an application with the Arizona Corporation Commission ("ACC" or "Commission") for authorization to transfer the water system assets and certificate of convenience and necessity ("CC&N") which were the subject of Commission Decision No. 72002<sup>1</sup>, to Tierra Linda Water Company, Inc. ("Tierra Linda"). Commission Decision No. 72002 authorized Smyth to acquire the water system assets and CC&N previously owned by Tierra Linda Homeowners Association, Inc. ("Tierra Linda HOA"). The subject water system assets and CC&N are located approximately ten miles southwest of Marana, in Pima County, Arizona. Smyth reported 63 metered water connections in the Company's 2010 Commission Annual Report. The CC&N covers an area of roughly 200 acres (approximately three-tenths of one square mile) in the northwest quarter of Section 29 in Township 12 South, Range 11 East. As currently platted, the certificated service area has the potential for a total of 190 residential metered water connections.

**Reason Given for the Proposed Transfer to Tierra Linda**

Smyth has formed a new corporation to ultimately own and operate the water system assets he acquired from Tierra Linda HOA pursuant to Decision No. 72002.<sup>2</sup> Smyth's application herein is intended to achieve that result. Legal counsel for the Company concluded that the water system assets and the CC&N could not be transferred directly from the Tierra Linda HOA to Tierra Linda and the assets and the CC&N would first have to be transferred to Smyth. There are no anticipated changes to the operation and maintenance of the Tierra Linda water system if the proposed transfer is approved.

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<sup>1</sup> Decision No. 72002 became effective on December 10, 2010.

<sup>2</sup> Smyth concluded that he preferred to own and operate the water system assets in question through an "S" corporation structure.

### **Water System Operation**

The Company's water system consists of one well (Pump Yield 200 gallons per minute), one 400,000 gallon storage tank, three booster pumps (one 50 horsepower ("HP") and two 10 HP), one 5,000 gallon pressure tank and a distribution system serving 63 metered connections.<sup>3</sup> Commission Utilities Division Staff ("Staff") concludes that the Company's water system has adequate production and storage capacity to serve existing customers and reasonable growth. Christopher Hill, Arizona Department of Environmental Quality ("ADEQ") Certified Operator No. OP008883, will continue as the certified operator of the water system. Mr. Hill is a Grade 4 water distribution system and water treatment plant operator.

### **Background Non-Account Water**

Non-Account water for the Tierra Linda HOA water system slightly exceeded Staff's recommended ten percent threshold in 2009. Therefore, Decision No. 72002 ordered Smyth upon transfer to coordinate the reading of the well meter and individual customer meters on a monthly basis and report this data in the Company's Commission Annual Report filed for the year ending 2010. If the reported water loss was greater than ten percent Smyth was ordered to prepare a report containing a detailed analysis and plan to reduce water loss to less than ten percent. As a result of Decision No. 72002, on February 10, 2012, the Company docketed a plan to reduce its water loss to less than ten percent. Staff recommends that the Company implement its water loss reduction plan filed in compliance with Decision No. 72002.

### **ACC Compliance**

A check of the Compliance Database indicates that there are currently no delinquencies for the Company and that the Company has substantially met the compliance obligations contained in Docket Nos. W-20689A-09-0327 and W-04236A-09-0327 (and Decision No. 72002).<sup>4</sup> Staff however remains concerned since currently available water loss data indicates the water system continues to experience water loss which exceeds Staff's recommended ten percent threshold. Therefore, Staff further recommends that the Company reduce water loss to less than ten percent by June 30, 2013. To verify this, the Company shall, by July 31, 2013, as a compliance item in this docket, file documentation which demonstrates that the Company's water loss for the proceeding 12 month period is less than the ten percent threshold. This filing should include a completed water use data sheet for the period of July 1, 2012 through June 30, 2013, to include the monthly water loss data and the calculation of the water loss percentage.

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<sup>3</sup> Water company plant description data reported in 2010 Commission Annual Report.

<sup>4</sup> Per Compliance Section email dated July 12, 2011.

### **ADEQ Compliance**

ADEQ regulates the Company's water system under ADEQ Public Water System I.D. No. 10-411. The Company has no major deficiencies and is delivering water that meets water quality standards required by 40 CFR 141/Arizona Administrative Code, Title 18, Chapter 4.<sup>5</sup>

### **Arizona Department of Water Resources ("ADWR") Compliance**

The Company's CC&N is located within the Tucson Active Management Area. ADWR has determined that the Company is currently in compliance with departmental requirements governing water providers and/or community water systems.<sup>6</sup>

### **Summary**

### **Conclusions**

1. Christopher Hill, ADEQ Certified Operator No. OP008883, will continue as the certified operator of the water system. Mr. Hill is a Grade 4 water distribution system and water treatment plant operator. Staff concludes that Tierra Linda has the knowledge and technical means to operate and expand the water system.
2. Staff concludes that the water system has adequate production and storage capacity to serve existing customers and reasonable growth.
3. The Company has no major deficiencies and is delivering water that meets water quality standards required by 40 CFR 141/Arizona Administrative Code, Title 18, Chapter 4.
4. ADWR has determined that the Company is currently in compliance with departmental requirements governing water providers and/or community water systems.
5. A check of the Utilities Division compliance database indicated that there are currently no delinquent compliance items for the Company.

### **Recommendations**

1. Staff recommends that the Company implement its water loss reduction plan filed in compliance with Decision No. 72002 on February 10, 2012. Staff further recommends that the Company reduce water loss to less than ten percent by June 30, 2013. To verify this, the Company shall, by July 31, 2013, as a compliance

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<sup>5</sup> Per ADEQ Compliance Status Report, dated July 27, 2011,

<sup>6</sup> Per ADWR Water Provider Compliance Status Report dated July 6, 2011.

item in this docket, file documentation which demonstrates that the Company's water loss for the proceeding 12 month period is less than the ten percent threshold. This filing should include a completed water use data sheet for the period of July 1, 2012 through June 30, 2013, to include the monthly water loss data and the calculation of the water loss percentage.

MEMORANDUM

TO: Blessing Chukwu  
Executive Consultant  
Utilities Division

FROM: Brendan C. Aladi *BCA*  
Public Utilities Analyst  
Financial and Regulatory Analysis Section  
Utilities Division

DATE April 12, 2012

IN THE MATTER OF (i) APPLICATION OF GARY SMYTH, AN INDIVIDUAL, TO TRANSFER WATER SYSTEM ASSETS AND CERTIFICATE OF CONVENIENCE AND NECESSITY TO TIERRA LINDA WATER COMPANY, INC.; AND (ii) THE APPLICATION OF TIERRA LINDA WATER COMPANY, INC. FOR AUTHORIZATION TO ISSUE STOCK TO ACQUIRE SAID WATER SYSTEM ASSETS AND CERTIFICATE OF CONVENIENCE AND NECESSITY.  
(DOCKET NOS. W-20689A-11-0252 AND W-20810A-11-0252)

**INTRODUCTION**

On June 24, 2011, Gary Smyth filed an application with the Arizona Corporation Commission ("Commission") for approval to transfer the water system assets and Certificate of Convenience and Necessity ("CC&N") to Tierra Linda Water Company, Inc. ("Tierra Linda" or "Company"). In addition, Tierra Linda requests Commission authorization to issue stock to acquire the water system assets and the CC&N. The water system currently serves about 63 customers based on rates and charges approved in Decision No. 67104, dated July 9, 2004.

Mr. Smyth, an individual, was authorized to acquire the water system assets and CC&N from the Tierra Linda Homeowners Association, Inc. ("HOA") pursuant to Decision No. 72002, issued December 10, 2010. According to the HOA, it sold the water system because it believed that management by a regulated private company with the financial resources to operate and upgrade the system would be in the best interest of the HOA membership. Mr. Smyth states that, shortly after the issuance of Decision No. 72002, he determined that he would prefer to operate the water system through an S-corporation structure. However, at that point he could not effect the transfer directly and had to first transfer the assets from the HOA to him as an individual. Consequently, Tierra Linda was formed and, on April 18, 2011, the Commission approved its Articles of Incorporation, which established Mr. Smyth as the Director and the President and also authorized the issuance of up to 1,000 shares of common stock. Tierra Linda now requests to



issue 501 shares of common stock to Mr. Smyth as consideration for his transfer of the water system assets and CC&N.

## **PUBLIC NOTICE**

On March 28, 2012, the Company docketed its *Affidavit of Mailing* showing that its customers of record were noticed of this filing through a bill insert, mailed on March 7, 2012.

## **THE TRANSACTION**

Mr. Smyth, an individual, seeks Commission authorization to sell and transfer to Tierra Linda the utility assets and CC&N that he recently acquired from the HOA under Decision No. 72002. Tierra Linda seeks authorization to issue 501 shares of its common stock to Mr. Smyth as consideration for that sale and transfer, thereby establishing Mr. Smyth's control of the Company. This transaction would complete Mr. Smyth's stated intent of ultimately operating the utility under an S-corporation structure.

## **FINANCIAL ANALYSIS**

Mr. Smyth originally acquired the water system assets from the HOA for \$70,000. Tierra Linda provided Staff with a list of the utility assets to be transferred under this transaction and the historic net book value of the plant in service was approximately \$864,106 as of December 31, 2010. Mr. Smyth now proposes to transfer those utility assets and the CC&N to Tierra Linda in exchange for 501 shares of its common stock.

In Decision No. 72002, which approved the original sale to Smyth, the Commission determined that Smyth had demonstrated "that he has adequate financial resources to operate, maintain and expand the system."<sup>1</sup> Under the proposed transaction, Smyth would become the sole shareholder and owner of the Company.

Staff also notes that the HOA was granted a CC&N in Decision No. 67104 on July 9, 2004, but it never filed for a rate case and so the actual rate base has never been established for this utility. Therefore, the Commission will require that appropriate proof of all historic capital expenditures be provided with the Company's next rate case application.

## **STAFF'S RECOMMENDATIONS**

Staff recommends:

1. That the Commission approve Gary Smyth's request for the transfer of utility assets to Tierra Linda.

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<sup>1</sup> Finding of Fact No. 23 at 4:5-6.

2. That the Commission approve Tierra Linda's request for authorization to issue 501 shares of Tierra Linda's authorized 1,000 shares of common stock to Gary Smyth as consideration for the water system assets to be transferred to Tierra Linda.
3. That the Commission authorize Gary Smyth and Tierra Linda to engage in any transactions and to execute or cause to be executed any documents so as to effectuate the authorizations requested with the application.
4. That Tierra Linda file all pertinent documents evidencing the consummation of this transaction, no later than 30 days from the effective date of transaction, with the Utilities Division Compliance Section and file a letter in Docket Control stating that such documents have been filed with the Compliance Section.

**MEMORANDUM**

TO: Blessing Chukwu  
Executive Consultant III  
Utilities Division

FROM: Lori H. Miller *lhmm*  
Programs and Projects Specialist II  
Utilities Division

THRU: Del Smith *DS*  
Engineering Supervisor  
Utilities Division

DATE: August 2, 2011

RE: **GARY SMYTH dba TIERRA LINDA HOMEOWNERS ASSOCIATION, INC. (DOCKET NO. W-20689A-11-0252)**  
**TIERRA LINDA WATER COMPANY, INC. (DOCKET NO. W-20810A-11-0252)**

Gary Smyth dba Tierra Linda Homeowners Association, Inc. has filed an application to transfer its CC&N to Tierra Linda Water Company, Inc.

Attached is a copy of the map for your files.

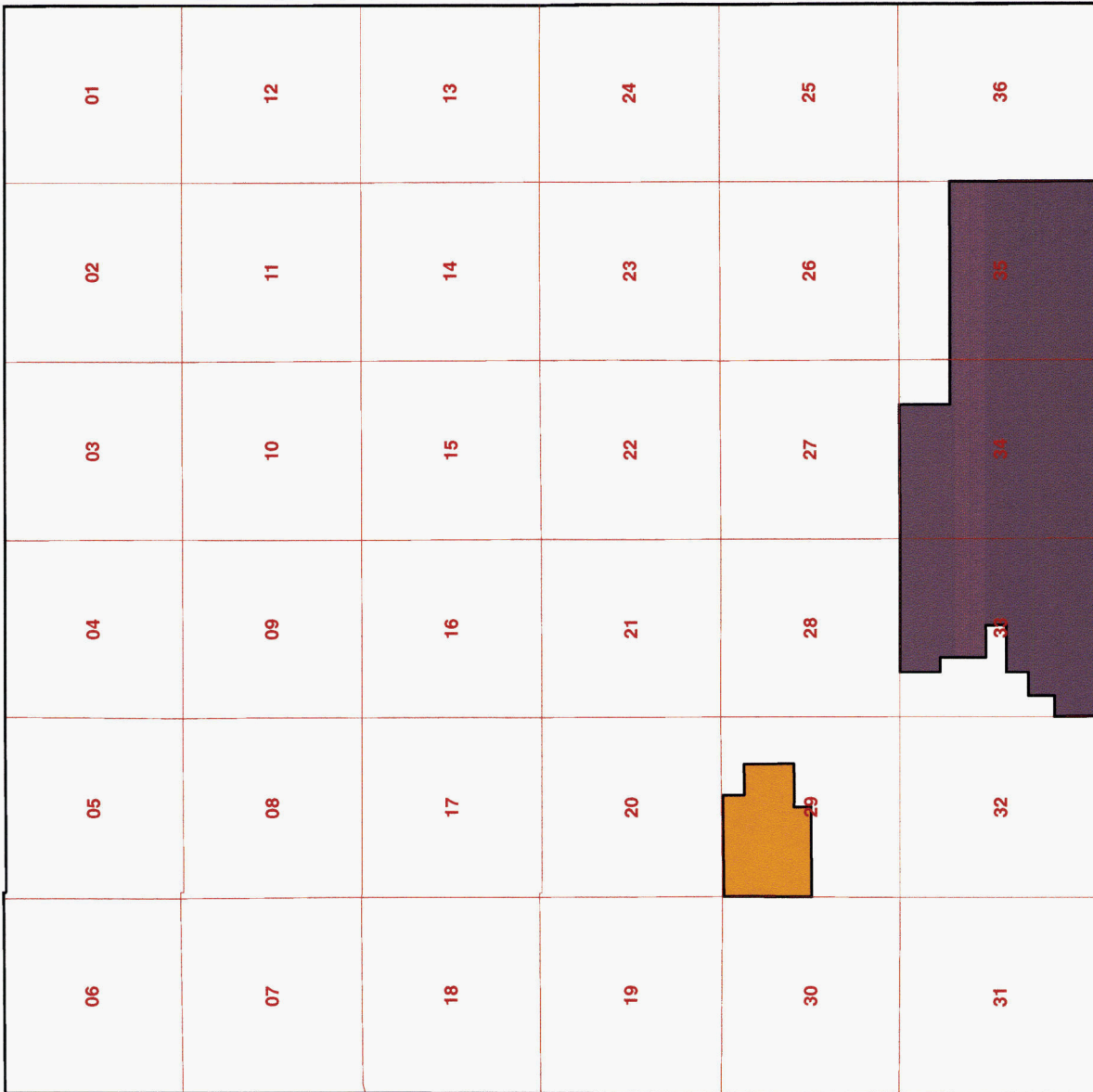
/lhmm

Attachment

cc: Mr. Lawrence V. Robertson, Jr.  
Mr. Gary Smyth  
Ms. Deb Person (Hand Carried)  
Mr. Del Smith  
File

RANGE 11 East

TOWNSHIP 12 South



- W-02126A (2)  
Avra Water Cooperative, Inc.
- W-20689A (1)  
Gary Smyth  
dba Tierra Linda Homeowners Association, Inc.
- Gary Smyth dba  
Tierra Linda Homeowners Association, Inc.  
Docket No. W-20689A-11-0252  
Application to Sell Assets & Transfer to  
Tierra Linda Water Company, Inc.  
Docket No. W-20810A-11-0252